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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)	
)	
Request for Review of)	CC Docket No. 02-6
Decisions of the Universal Service)	
Administrator)	
)	FRN No. 1202868
)	Application No. 427753
Nexus Systems, Inc., Service Provider)	
)	
)	
)	

**REQUEST FOR REVIEW
OR IN THE ALTERNATIVE WAIVER**

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August 29, 2005

INTRODUCTION

Nexus Systems, Inc. ("Nexus") is the service provider for the Winn Parish School Board ("Winn") for Internet Access service for the application and Funding Request Number ("FRN") under review. The FRN at issue was denied by the Schools and Libraries Division ("SLD") for funding Year 2004 based on perceived insufficient documentation provided by the applicant to determine the eligibility of the requested service. The FRN represented a continuation contract that already had been reviewed at least three times and approved the prior year. In addition, the Winn did not understand what specific information was needed, but did respond with what was assumed to be necessary. An appeal was filed with the Administrator March 8, 2005, requesting review based on documentation previously provided and available to USAC. That appeal was denied June 30, 2005. This request for review is timely filed under Section 54.720 of the Commission's rules. 47 C.F.R. § 54.720.

DISCUSSION

Applicants are required to provide timely submission of sufficient documentation in order for the SLD to determine the eligibility of a service request. This principle is not challenged by the applicant or service provider. Both the applicant and the service provider support the need for proper review of applications by the SLD prior to funding decisions. The questions presented involve:

1. The clarity of the request and whether the applicant reasonably could conclude what information was requested.
2. What documentation had been previously provided and should have been available to the SLD for review.
3. How the documentation on file or presented provided sufficient grounds for a decision.
4. What process should provide suitable information for a decision.

The FRN in question is for Internet Access services and represents a contract awarded for funding Year 2003 which covers funding Years 2003 – 2007. The contract resulted from a comprehensive RFP with multiple bidders, with the award going to the low bidder. The contract was reviewed in a comprehensive 2003 Selective Review and 2003 Program Integrity Assurance ("PIA") review, approved, and funded for 2003. The contract was reviewed again in a 2004 Selective Review, with all previous documentation submitted and no exceptions noted. Concurrent with the 2004 Selective Review, the PIA began review of all applications by Winn. Regarding this FRN, the request for information made by Kenneth Stibitz of PIA Team 6 on November 11, 2004 was as follows:

*Regarding the Internet Access by Nexus Systems for \$8,561.00 – Please provide the Vendor documentation used to establish this request. Also please provide the components of the bundled service (IE: GroupWise, desktop, ZEN works, Bordermanager etc.).
If you have any questions, please feel free to contact me. (Kenneth Stibitz)*

For purposes of clarity, it must be explained that Mr. Stibitz was combining information requests for two separate FRN's when discussing "bundled service". The specific components listed were not part of the Internet Access, but were part of a separate request not being provided by this vendor.

Jan Anyan of Winn had already responded to numerous requests for information on other Year 2004 applications and FRN's. She was confused as to the nature of this request since the application represented a continuation contract already documented and approved in the funding Year 2003 Selective Review and PIA process. Ms. Anyan had already provided a comprehensive response in the funding Years 2003 and 2004 Selective Reviews. After several contacts between PIA and seeking information from this service provider in connection with the latest request, she did respond with copies of the original service provider proposal.

In the USAC appeal denial, the Administrator describes a series of conversations and correspondence between Jan Anyan of Winn and the PIA Team 6. The basis of the appeal denial was that Ms. Anyan did not respond to requests for information regarding the request for Internet Access. Jan Anyan was confused as to the scope of information needed and spoke with Mr. Stibitz requesting clarification of "vendor documentation" requested. She also advised how comprehensive information had already been provided in multiple Selective Reviews. She contacted this vendor seeking "vendor documentation." With the general nature of the request, we suggested she provide the Nexus contract and/or proposal to the SLD.

Jan Anyan responded to the PIA request on November 28, 2004 with faxed copies of the entire proposal from Nexus and sample copies of bills from the company. The only reason for the delay was the school district was on Thanksgiving holiday and Ms. Anyan was unsure what additional information was actually needed. The appeal denial does not acknowledge receipt of the faxed information or perhaps that the information that was received was not sufficient. The Administrator therefore contends lack of response was the cause for denial.

The issue ignored by USAC in the appeal denial, however, is how the SLD had been provided the same information at least three times prior to the correspondence described above. Winn had been under Selective Review for funding Years 2002, 2003 and 2004. The contract in question began with funding Year 2003. The process, services, and contract were examined in Selective Review for 18 months for Funding Year 2003 with no exceptions noted. The funding request for 2003 was approved June 30, 2004.

The Year 2004 application was reviewed in the Spring of 2004 by PIA in parallel with the Year 2004 Selective Review. Nexus understands that the PIA team leader assigned to the Winn application left the SLD in the

spring of 2004, with processing of applications incomplete, so the Winn review began again in the Fall of 2004 with Mr. Stibitz and PIA Team 6. Previously, Winn had undergone the comprehensive Selective Review for funding Year 2004, representing the third consecutive year of Selective Review for Winn. The standard list of Selective Review items was 17 pages long and Winn responded again with copies of every RFP, bid, contract, evaluation and discussion for every FRN. The Selective Review for funding Year 2004 yielded no exceptions. At this point, Winn has provided documentation for the Internet contract in three separate reviews.

In the June 30 appeal denial, the USAC asserts:

"On appeal you have argued that the requested services are a continuation of a previously approved contract and that the information necessary to determine the eligibility of the requested services was available to the SLD. However, the applicant failed to inform the SLD of this information and failed to provide suitable documentation when contacted."

The Administrator is incorrect as Ms. Anyan complained to the PIA group about the duplicate nature of the requests, but received no guidance. Even in the absence of information being provided to PIA, however, the Form 471 FRN contract data is obvious and cannot be ignored. The underlying Form 470 (from 2003), Contract Award Date, Contract End Date, and Contract Number all demonstrate a continuation contract. In addition, it was common knowledge to the PIA Team that every customer of this service provider had been subjected to Selective Review for three consecutive years. It is illogical to conclude the SLD was unaware of the nature and details of the contract.

During November, 2004, when the Winn application was under review, the SLD held a vendor training conference in New Orleans where a prime topic of discussion was how the SLD repeatedly asks for the same information from multiple reviewers. At that conference, the SLD advised attendees how all personnel at the SLD share information and neither applicant nor vendor should be required to respond to duplicate requests. Instead, the party should advise the SLD where duplicate information is being requested and direct SLD employees to the information already available. Ms. Anyan did advise the SLD of the duplicate requests, but later also sent copies of the vendor proposal to PIA as requested. Ironically, the Winn application is now being denied based upon a problem that the SLD acknowledges was occurring during the same period.

SUMMARY

The key points for which review is requested are:

1. The nature of the request for information was vague. The applicant did not receive any clarification, but responded with information on hand. Any delay in response by the applicant was minor when compared to

multiple overlapping Selective Reviews and duplicated PIA reviews. The applicant did seek to comply with information requested.

2. The proposal and contract data had already been provided to the SLD in funding Year 2003 Selective Review and PIA process where the contract originally was approved. The proposal and contract data had already been provided to the SLD in funding Year 2004 Selective Review, where there was no exception noted.
3. The applicant did fax additional copies of proposals in November, 2004 in response to information requested. This action represented the fourth review of the previously approved contract.
4. The Administrator asserts the applicant had a responsibility to inform the SLD of the nature of the continuation contract. The applicant did make the SLD aware of the situation, but received no assistance. Every point of data on the FRN, however, described a continuation contract and the PIA Team was certainly aware of the concurrent and previous Selective Reviews. Information was available to the SLD to review and process the application.

The basis for review can be seen where:

1. The FCC has ruled in *Fayette County School District* (DA 05-2176)(released July 27, 2005) that the SLD must provide sufficient detail in an information request for an applicant to provide a meaningful response. Winn provided information in two identical previous Selective Reviews and one current PIA review and sought to provide information for the reviewer in question. The applicant was understandably at a loss as to what additional information could be needed. The SLD could have asked for more specific information, which could then have been addressed. In every other FRN for the applicant, the SLD asked for specific information, the applicant responded, and the application was processed.
2. The FCC has ruled in *Naperville Community Unit* (DA 01-73) (released February 27, 2001) that the SLD should provide a favorable funding decision in cases where missing information could be easily deduced. Volumes of information from successive Selective Reviews provided all necessary information needed for an informed decision. Additionally, FRN data demonstrated that the Internet Access contract could only be a continuation from a previously approved contract. The SLD had, or could have easily deduced, information on hand to make a decision.
3. The current FCC NPRM (FCC 05-124) (released June 14, 2005) seeks to address the situation where multiple year contracts are subjected to repeated review each year. It is an illogical waste of resources for the USF,

applicant, and vendor to repeatedly review previously approved contracts, especially where the contract process has been through Selective Review for multiple years. This application is a simple example of how an undue burden can be placed on a small school district, resources of both the SLD and applicant misdirected in the process, and subsequent improper denial of funding for the applicant. The school district has already been held to a much higher standard for response than almost any other applicant.

CONCLUSION

Based on the evidence presented, it is requested the Commission reverse the decision of the Administrator and remand the application to the SLD to be evaluated based on prior submitted information. If the Commission determines the applicant did not comply with Commission rules, we note it would be in the public interest to grant a waiver of rules in this case. Nexus respectfully submits that based on the foregoing recited facts there is clearly good cause for doing so. The district provided complete cooperation with the SLD during three years of Selective Review and has met every goal of the USF. It is in the public interest to approve continuation funding on a previously approved contract where initial denial was due to simple miscommunication by the district or misunderstanding of available information by the SLD.

Respectfully Submitted,



Mark Stevenson
President
Nexus Systems

Attachments:

1. Winn FRN Response Documentation November 28, 2004
2. FRN FCDL – Winn Parish School Board, January 11, 2005
3. Nexus Systems SLD Appeal March 8, 2005
4. USAC Appeal Decision Letter June 30, 2005

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 29th day of August, 2005, a copy of the foregoing Request for Review or in the Alternative Waiver has been served via electronic mail (*) or first class mail, postage pre-paid, to the following:

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